

### III. REMARKS

Claims 1-40 are pending in this application. By this amendment, claims 1, 11, 15, 17, 18, 28, 32, 34-36 and 39 have been amended. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 1-40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-56 of co-pending Application No. 09/917,536. Claims 1-7 and 10-17 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Agrawal *et al.* (U.S. Patent No. 6,606,661), hereafter "Agrawal" in view of Bondarenko *et al.* (U.S. Patent No. 6,389,028), hereafter "Bondarenko." Claims 8-9 and 25-26 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Agrawal in view of Bondarenko and further in view of Slotznick (U.S. Patent No. 6,011,537), hereafter "Slotznick." Claims 18-40 are rejected for the same reasons as claims 1-17.

#### A. REJECTION OF CLAIMS 1-40 UNDER 35 U.S.C. §103(a)

With regard to the 35 U.S.C. §103(a) rejection over Agrawal in view of Bondarenko, Applicants assert that the cited references do not teach each and every feature of the claimed invention. For example, with respect to independent claims 1, 21, and 55, Applicants submit that, contrary to the argument of the Office, Agrawal fails to teach or suggest allocating to an

access slot, which specifies a time period during which the scarce resource may be accessed, said requester. Instead, the invention in Agrawal discloses modifying the value of a timer that determines the amount of time a client may be connected to a socket of a server according to the current load on the server. Col. 2, lines 28-43. If no socket is available at the time of a request from a client to the server, the request is queued in the server queue to wait on resources. Col. 3, lines 4-10. However, Agrawal does not teach that a time period is specified, during which the client may access the resource. In contrast, the present invention includes "...allocating to an access slot, which specifies a time period during which the scarce resource may be accessed, said requester." Claim 1. As such, the requester as included in the claimed invention is not enqueued as in Agrawal, but is instead allocated to an access slot, which specifies a time period during which the scarce resource may be accessed. Thus, the access slot as included in the present invention is not equivalent to the queue of Agrawal. Bondarenko does not cure this deficiency. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

With respect to independent claims 36 and 39 and dependent claims 11, 15, 17, 28, 32 and 34, Applicants respectfully submit that, contrary to the argument of the Office, Bondarenko fails to teach or suggest determining with the access level of the scarce resource at the desired maximum whether said scarce resource is able to accommodate access by said late requester. The passage of Bondarenko cited by the Office includes a description of a queue for a call center that includes a queue monitor for delivering information about the queue to the user. Col. 9, lines 7-54. However, nowhere does Bondarenko teach or suggest that a user that has missed or gone beyond the time period for accessing the scarce resource may be allowed to access the resource even though the desired maximum capacity has already been reached. In contrast, the

claimed invention includes "...determining with the access level of the scarce resource at the desired maximum whether said scarce resource is able to accommodate access by said late requester." Claim 11. As such, the determining step as included in the claimed invention does not merely place users into a queue and provide information, but rather determines whether the scarce resource is able, even though the access level is currently at the desired maximum, to accommodate a requester that has missed or gone beyond the time period for accessing the scarce resource. Thus, the determining step as included in the claimed invention is not equivalent to the functions of the queue in Bondarenko. Agrawal does not cure this deficiency. Accordingly, Applicants request withdrawal of this objection.

With regard to the Office's other arguments regarding dependent claims, Applicants herein incorporate the arguments presented above with respect to independent claims listed above. In addition, Applicants submit that all dependant claims are allowable based on their own distinct features. However, for brevity, Applicants will forego addressing each of these rejections individually, but reserve the right to do so should it become necessary. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

#### **B. REJECTION OF CLAIMS 1-40 UNDER OBVIOUSNESS TYPE DOUBLE PATENTING**

Claims 1-40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting over claims 1-56 of co-pending Application No. 09/917,536. Initially, Applicants assert that the cited application fails to teach allocating to an access slot, which specifies a time period during which the scarce resource may be accessed, said requester. Instead, the cited application includes a queue. Applicants respectfully request that the Office

withdraw the provisional rejection because the inventions are patentably distinct from each other.

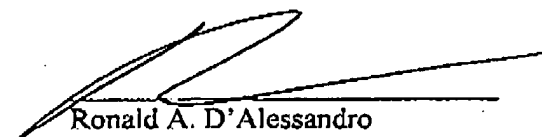
Furthermore, Applicants will, if necessary, address this in a later paper with, e.g., a terminal disclaimer, upon an indication of allowable subject matter.

#### IV. CONCLUSION

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,

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